06-524 Aug. 19. 2006

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Supplemental Appendix:

Appendix E: In the Commonwealth Court of Pennsylvania
Memorandum Opinion by Judge Friedman
July 28, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alberta A. Swan,	:	
Petitioner	:	
	:	
v.	:	No. 584 C.D.2005
	:	Submitted: June 10,
Workers' Compensation Appeal Board	:	2005
(Wal-Mart # 2334 and A.I.G. Claim	:	
Services, Inc.),	:	
Respondents	:	

BEFORE: HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN FILED: July 28, 2005

Alberta A. Swan (Claimant) petitions *pro se* for review of the January 26, 2005, order of the Workers' Compensation Appeal Board (WCAB) affirming the decision of a workers' compensation judge (WCJ) to deny Claimant's claim petition. We affirm.

On March 3, 2003, Claimant filed an amended claim petition, alleging that she was totally disabled by psychological and physical injuries suffered as a result of an incident that occurred on September 18, 2001, in the course and scope of her employment with Wal-Mart (Employer). Employer filed a timely answer denying the allegations, and hearings were held before a WCJ.

Claimant testified that she was employed by Employer as an accounting clerk, and she worked the 10:00 p.m. to 7:00 a.m. shift in the store's cash room, where,

among other things, she was responsible for preparing money for deposit in the bank. Claimant explained that the cash room is attached to the accounting room, and one can only access the cash room through the accounting room. Claimant stressed that the only persons permitted access to the accounting room were employees assigned to that location and management. A television monitor outside the accounting room allowed someone working inside to see who was at the door. (WCJ's Findings of Fact, Nos. 5-9)

Claimant testified that sometime after 2:00 a.m. on September 18, 2001, while she was alone in the cash room, she heard a man hollering at the accounting door, knocking heavily and demanding entry. According to Claimant, she recognized the voice and, through the television monitor, she identified the man as someone she previously had seen doing something to the store's cameras; he also had been in the cash room before with a manager.[1] Claimant testified that she denied the man entry, but he began to try to push against the door with his body. Claimant stated that she paged the manager; when he did not respond, she called her husband, who worked in the store's produce

[1] On cross-examination, Claimant was presented with a cash log, in which transfers from the cash fund were reported. Claimant admitted that the September 5, 2001, cash log sheet indicated that, at the direction of management, she had reimbursed expenses for mileage and food to Michael Schmidt, who proved to be the man at the door. Claimant testified that, at the time, she did not know whether Schmidt was an employee, and she denied that she was ever told that he was part of a work crew installing cameras at the store. (WCJ's Findings of Fact, Nos. 12-13)

department, and then dialed 911 to report a robbery in progress. Claimant was still behind the locked accounting room door when her husband, the manager and the police arrived. (WCJ's Findings of Fact, Nos. 10-12.)

After the incident, Claimant finished working her shift; however, she testified that, when she got home, she had difficulty sleeping and her blood pressure was extremely high. Claimant stated that she sought treatment from Farrell Crouse, M.D., who had been her treating physician for over thirty years. Claimant testified that she has not returned to work because of her mental condition; in addition, Claimant testified that the incident has caused various physical ailments, including a worsening of her prior blood pressure problems, diabetes, and back condition. (WCJ's Findings of Fact, Nos. 14-17.) Claimant presented the testimony of her husband and her daughter to corroborate Claimant's own depiction of events and subsequent worsening mental and physical condition. (*See* WCJ's Findings of Fact, Nos. 21-25.)

Claimant also offered the deposition testimony of Dr. Crouse, who specializes in psychiatry. Dr. Crouse stated that he saw Claimant shortly after the September 18, 2001, incident, at which time Claimant was very anxious and depressed secondary to the anxiety, with anger directed at Employer. Dr. Crouse stated that his treatment of Claimant included numerous phone conversations, psychotherapy, anti-anxiety drugs and anti-depressants. According to Dr. Crouse, Claimant had improved immeasurably since the initial treatment and only took a minor amount of medication, as needed. (WCJ's Findings of Fact, Nos. 52-55.) Dr. Crouse did not testify that Claimant suffered a physical injury, or aggravation of a physical injury, as a result of the September 18, 2001, incident. Moreover, Dr. Crouse did not testify that Claimant was disabled as a result of her mental condition or the incident at Employer's store.[2] (WCJ's Findings of Fact, Nos. 57-58.)

In opposition to the claim petition, Employer presented the testimony of Michael Schmidt, the man at the accounting room door during the incident of September 18, 2001. Schmidt testified that, as a loss prevention officer for

Employer, he was part of a crew overhauling security cameras in the store. Schmidt stated that he had met Claimant prior to the incident and had received travel voucher money from her. He testified further that, on the evening of September 18, 2001, he and other loss prevention officers were introduced to Claimant and, later that evening, Claimant was present when they were in the cash room to check the placement of cameras. (WCJ's Findings of Fact, Nos. 44-46.)

Schmidt stated that, sometime after 2:00 a.m., his supervisor sent him and another crew member to the cash room to work on the camera installation. The other man was sidetracked, and when Schmidt arrived alone, he knocked on the

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[2] Aware that Claimant was representing herself in this case, the WCJ informed Claimant that she needed medical evidence to sustain her burden of proof in the case. Further, the WCJ suggested that, because Claimant would benefit by the WCJ's presence during questioning, Claimant should have Dr. Crouse testify live, rather than by deposition. (*See* N.T., 1/15/03 at 9-14; N.T., 3/5/03 at 47-48, 52-56; N.T., 3/26/03, at 21.) The WCJ also advised Claimant on a number of occasions exactly what information she needed to elicit from her medical expert in order to sustain her burden of proof. (*See* N.T., 12/2/02 at 32-33; N.T., 1/15/03 at 11; N.T., 3/5/03 at 57; N.t., 3/26/03 at 20.) Unfortunately, Claimant did not follow the WCJ's advice.

accounting room door, identified himself and looked up into the television camera to be recognized. According to Schmidt, he knocked a "regular" knock a couple of times and requested admittance, but Claimant indicated that she did not know him and warned that if he did not leave, she would call the police. Schmidt testified that he was at the door for only fifteen to twenty seconds before leaving to phone his supervisor about what was transpiring. Schmidt denied threatening Claimant and stated that he did nothing to cause Claimant to believe that he was attempting a robbery. (WCJ's Findings of Fact, Nos. 47-49, 51.) In addition to Schmidt, Employer presented the testimony of three fact

witnesses who corroborated Schmidt's version of events. (*See* WCJ's Findings of Fact, Nos. 26-27, 24-35, 37-38, 42-43.)

Employer also presented the deposition of Abram Hostetter, M.D., a board-certified psychiatrist, who performed a psychiatric evaluation of Claimant on August 13, 2002, at Employer's request. Dr. Hostetter diagnosed Claimant with a longstanding, non-work-related histrionic personality disorder, and Dr. Hostetter explained that this personality disorder involves a pattern of excessive emotions and means that Claimant reacts excessively to situations that may not cause others any trouble. Dr. Hostetter opined that Claimant has no psychiatric disorder as a consequence of the September 18, 2001, incident; rather, she overreacted to a normal workplace event and then magnified the event and saw herself as markedly impaired by it. Dr. Hostetter also opined that Claimant could return to her former employment with Employer. (WCJ's Findings of Fact, Nos. 59-60, 62, 64, 66-67.)

The WCJ credited the testimony of Employer's fact witnesses as to the events of September 18, 2001, over the contrary version offered by Claimant. (WCJ's Findings of Fact, No. 73.) The WCJ also rejected the testimony of Claimant and her family relating any of Claimant's physical problems to the work incident and noted that Claimant presented no medical testimony establishing such a relationship. (WCJ's Findings of Fact, No. 75.) The WCJ credited the testimony of Claimant, her family and Dr. Crouse that Claimant suffered anxiety in response to Schmidt's actions during the incident; however, accepting Dr. Hostetter's testimony, the WCJ found that Claimant had no reasonable basis for her response. (WCJ's Findings of Fact, Nos. 76-78.) Moreover, the WCJ found that there was no expert testimony that Claimant was disabled as a result of the events of September 18, 2001. (WCJ's Findings of Fact, No. 79.)

Based on these credibility determinations, the WCJ concluded that Claimant failed to carry her burden of proving that: (1) she was exposed to abnormal working conditions resulting in a psychiatric injury; (2) she suffered disability as a result of any psychiatric injury; or (3) she suffered any work-related physical injury. (WCJ's Conclusions of Law, Nos. 2-4.) Accordingly, the WCJ dismissed Claimant's claim petition. The WCAB affirmed.

On appeal to this court,[3] Claimant argues that the WCJ and WCAB erred in denying her claim petition. Claimant asserts that she proved that her

[3] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704.

working conditions on September 18, 2001, were not normal and that she became disabled as a result of the September 18, 2001, work incident.[4] We disagree.

In every claim petition proceeding, the claimant bears the burden of proving all the elements necessary to establish entitlement to an award of benefits. *Inglis House v. Workmen's Compensation Appeal Board* (*Reedy*), 535 Pa. 135, 634 A.2d 592 (1993). Where there is no obvious causal connection between an injury and the alleged work-related cause, that cause must be established by unequivocal medical testimony. *Lewis v. Commonwealth*, 508 Pa. 360, 498 A. 2d 800 (1985); *Cromie v. Workmen's Compensation Appeal Board* (*Anchor Hocking Corp.*), 600 A.2d 677 (Pa. Cmwlth. 1991). Similarly, where the work-related nature of the injury is obvious, but its relation to ongoing disability may not be, there is a need for medical evidence. *Cromie*. Further, to recover workers' compensation benefits for a psychic injury, a claimant must prove by objective evidence that he or she has suffered a psychic injury and that such injury is other

than a subjective reaction to normal working conditions; that is, the claimant must establish that the injury arose from abnormal working conditions. *Davis v. Workers' Compensation Appeal Board* (*Swarthmore Borough*), 561 Pa. 462, 751 A.2d 168 (2000). Even if a claimant shows actual, not merely perceived or imagined, employment events that have precipitated psychic injury, the claimant must still prove the events to be abnormal in order to recover. *Id.* Whether the claimant has been exposed to

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[4] In her Statement of Questions Involved, Claimant also argues that the WCAB failed to address Claimant's **mental** injuries before rendering a decision, as evident by the WCAB's statement in its opinion that "Claimant presented no testimony establishing that she sustained any **physical** injuries." (WCAB's op. at 7; Claimant's brief at 10, emphasis in original). However, in isolating this one statement, Claimant simply ignores the WCAB's discussion of her claim of work-related psychological injury; thus, we will not address the matter further.

abnormal working conditions is a question of law that is fully reviewable on appeal. *Id.*

In her brief to this court, Claimant recounts her own version of the events of September 18, 2001, characterizing Schmidt's behavior as violent and asserting that her life was in danger because Schmidt was attempting to break into the cash room and rob her. However, the WCJ rejected Claimant's version of events and accepted the contrary testimony of Employer's fact witnesses regarding the occurrences of that evening. The WCJ is the ultimate fact-finder in a workers' compensation case, with sole authority to assess the credibility of witnesses and resolve conflicting testimony. *Grimes v. Workmen's Compensation Appeal Board* (*Proctor & Gamble*), 679 A.2d 1356 (Pa. Cmwlth.), *appeal denied*, 546 Pa. 670, 685 A.2d 548 (1996). Although the WCJ believed that Claimant suffered from anxiety as a result of the September 18, 2001, incident, Schmidt's testimony and Dr. Hostetter's credible opinion fully support the WCJ's determination that Claimant overreacted to normal

work events. Thus, the WCJ did not err in determining that Claimant was not subjected to abnormal working conditions.

Claimant also contends that she provided sufficient medical evidence to prove that she became disabled as a result of the work incident. However, the record fully supports the WCJ's findings that Dr. Crouse's testimony was inadequate to sustain Claimant's burden of proof.[5] Thus, the WCJ did not err

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[5] In her appeal documents, Claimant included a letter from Dr. Crouse, dated February 11, 2004, expressing his professional opinion that the incident on September 18, 2001, was responsible for worsening Claimant's emotional condition and rendered her unable to work. (Footnote continued on next page...)

In denying Claimant benefits based on her failure to prove that she sustained any physical or mental disability.

Accordingly, we affirm.

"s/Rochelle S. Friedman, Judge

(continued...)
(Attachment D to Claimant's appeal from the WCJ's decision.) However, because this document was not part of the record before the WCJ, it cannot be considered on appeal.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alberta A. Swan,	:	
Petitioner	:	
v.	:	No. 584 C.D. 2005
Workers' Compensation Appeal Board (Wal-Mart # 2334 and A.I.G. Claim Services, Inc.),	:	
Respondents	:	

ORDER

AND NOW, this 28th day of July, 2005, the order of the Workers' Compensation Appeal Board, dated January 26, 2005, is hereby affirmed.

"s/Rochelle S. Friedman, Judge

Certified from the Record
July 28, 2005
and Order Exit